

THOMAS S. AMIERABLE, Petitioner, v. His Honor, **SAMUEL B. COLE**, Resident Judge, Circuit Court of the First Judicial Circuit, Montserrado County, Respondent.

APPEAL FROM ORDER IN CHAMBERS UPON APPLICATION FOR WRIT OF MANDAMUS TO THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued May 7, 1957. Decided June 14, 1957.

1. An inferior court must approve a duly presented appeal bond.
2. Mandamus is a proper remedy to compel an inferior court to perform a duty prescribed by law.
3. The constitutional right of a litigant to complete an appeal may not be judicially denied.
4. An appeal bond may answer the purpose of an appearance bond.

Petitioner was examined and committed to jail by a Magistrate on charges of having received stolen goods. Upon the Magistrate's statement of lack of jurisdiction, petitioner applied to the Circuit Court of the First Judicial Circuit, Montserrado County, for a writ of habeas corpus. The Circuit Court conducted a hearing and refused to issue the writ of habeas corpus or to approve an appeal bond presented by petitioner for the purpose of completing an appeal to the Supreme Court from the order of the Circuit Court refusing to issue the writ of habeas corpus. Petitioner applied to the Supreme Court for a writ of mandamus to compel the respondent Resident Judge of the Circuit Court to approve the appeal bond. The writ of mandamus was granted by the Justice presiding in Chambers in an order from which the respondent appealed to the Supreme Court, *en banc*. This Court held that the writ of mandamus had been rightly granted, and that the ruling and order of the Justice presiding in Chambers should be *affirmed*.

H. Smythe for petitioner. *J. Dossen Richards* for respondent.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

The refusal of His Honor, Samuel B. Cole, Resident Judge of the First Judicial Circuit,

Montserrado County, to approve an appeal bond in a habeas corpus proceeding decided by him against Thomas S. Amierable, petitioner herein, gave rise to mandamus proceedings, with issuance and service of relevant process and returns thereto by respondents. The mandamus proceedings were authorized by His Honor, Mr. Justice Pierre, presiding in Chambers. Petitioner's application having been duly examined, and the Justice presiding in Chambers being satisfied with the legal sufficiency of the petition, a ruling was rendered in petitioner's favor, ordering the respondent Circuit Judge, *inter alia*, to "approve the appeal bond of petitioner in habeas corpus as well as all other documents which would be necessary to facilitate completion of his appeal." To this ruling the respondents excepted and prayed an appeal to this Court, *en banc*. We deem it essential to quote the ruling above referred to :

"According to the records in this case, it would appear that the petitioner was examined by Magistrate Collins in Bondiway upon charges of having received stolen goods; and he was incarcerated in the Bondiway jail pending the posting of a bond to appear before the Circuit Court of the First Judicial Circuit, Montserrado County, for trial. The Magistrate ruled that he did not have jurisdiction over the subject matter.

"This ruling was given at a time when the Grand Jury for the County of Montserrado was sitting; yet the records reveal that the accused was kept in jail in Bondiway until a writ of habeas corpus was applied for, to release him from what he contended was illegal detention. It would seem that, after the Magistrate had ruled the matter to be beyond his trial jurisdiction, he nevertheless imprisoned the accused for a period of over a month ; and it was because of this imprisonment that the writ of habeas corpus was applied for.

"Respondent, His Honor, Judge Cole, conducted a hearing on the application for habeas corpus, and issued a ruling to the effect that, even though the accused was imprisoned on a regular writ, and was tried and sentenced by the Magistrate in a matter over which the said Magistrate had no trial jurisdiction, nevertheless habeas corpus would not lie; and so he ordered that the prisoner be returned to the custody of the Magistrate in Bondiway.

"The petitioner thereupon instituted an appeal to the Supreme Court, and immediately tendered an appeal bond which, according to the petition in these proceedings, was refused approval by the respondent, Circuit Judge Cole. Petitioner's counsel then applied to us for the issuance of a writ of mandamus to compel the said respondent to approve the said appeal bond and thereby facilitate the petitioner's

appeal to the Supreme Court.

"There would seem to be several irregularities, beginning with the hearing by the Magistrate in Bondiway, and up to, and including the determination of the habeas corpus proceedings in the Circuit Court. But because these points belong to the case on appeal, we shall not now pass upon them but shall confine ourselves to determining the merits of the petition for mandamus.

"Under our statutes, an appeal bond is a necessary prerequisite to the completion of an appeal ; and no court may legally refuse to approve it when duly presented. Judge Cole has contended that he refused to approve the bond in question because it was not accompanied by a property qualification certificate from the Bureau of Revenues. Petitioner's counsel disputes this, and contends that he did present property certificate for property valued at \$13,200. But, aside from this question, we inquired of Judge Cole whether he considered it proper for him to have raised the question of the absence of the property qualification certificate. He replied that he had raised the question in order to avoid any possibility of violating a statute which requires that all bonds be accompanied by property qualification certificates, since this bond did not carry such a certificate. I have not been able to find the statute referred to. However, be that as it may, I am of the opinion that Judge Cole should have approved the appeal bond in the absence of any submission of such grounds to the contrary of the prosecution.

"Mandamus is a proper remedy to compel an inferior court to perform a duty which by law is its right to perform. The writ will not issue, however, to compel a court to perform any act for which there is no legal authority, or to grant a right to which the petitioner is not legally entitled.

"Appeal is a constitutional right of every litigant; and a court cannot refuse facilitating the completion thereof, thereby depriving the appealing party of a fundamental right.

"It is therefore our ruling that there is merit in the instant application for mandamus, and that the writ should be, and the same hereby ordered issued. The clerk of this Court is ordered to send a mandate to the Circuit Court of the First Judicial Circuit, Montserrado County, commanding His Honor, Judge Cole, to approve the appeal bond of the petitioner in habeas corpus, as well as all other documents which would be necessary to facilitate completion of this appeal. The question of whether Judge Cole is still in term does not arise in approval of appeal of documents; so the bond

should be presented to him if he is still in the City, and should be sent for his approval to any circuit to which he might have already travelled. It is also our ruling that, upon approval of the bond, the petitioner will be immediately released from further custody, pending the determination of the matter on appeal. If he should be unable to file a bond, he will continue to remain in custody until the Supreme Court has decided the appeal. And it is hereby so ordered. Costs of these proceedings disallowed."

It would be needless to undertake exhaustive research or to enter upon a lengthy discussion to establish the legal soundness of the above-quoted ruling of the Justice presiding in Chambers. Indeed, the respondent Circuit Judge conceded same when, despite the pendency of his appeal before this Court, *en banc*, for final determination, he executed the aforesaid ruling. The act of the respondent Circuit Judge in demanding an appearance bond of petitioner in the face of the above-quoted ruling constitutes flagrant disregard of and disobedience to the mandate of this Court, and savors of contempt. Any judicial or ministerial officer who, deliberately and intentionally, directly or indirectly, subordinates the execution of the mandates of this Court to unauthorized conditions or restrictions not therein embraced will be deemed guilty of contempt of Court, and should suffer punishment therefor according to law. This unwarranted and contemptuous act of respondent Circuit Judge Cole was brought to the notice of the Court during argument by counsel for petitioner and was not denied by the said respondent Circuit Judge. But, as this matter is not properly before us, we shall refrain from further comments thereon.

It is to be observed, however, that the issue raised in this matter by respondents, to the effect that an appeal bond does not answer the purpose of an appearance bond, seems rather strange when petitioner made clear that he was appealing from the judgment of the lower court in the habeas corpus proceedings decided against him, and that he intended thereby to place himself under the jurisdiction of this Court. Howbeit, it should be noted that such bonds—appearance and appeal—in their several operative and legal applications, impose an obligation, binding in effect, and without which they would be voidable.

In view of the foregoing, it is our opinion that the ruling of His Honor, Mr. Justice Pierre, should be upheld and the order issued in accordance therewith affirmed. And it is hereby so ordered.

Order affirmed.